

HOUSE BILL No. 1568

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.5-5; IC 36-9.

Synopsis: Sewer and storm water fees incurred by tenants. Establishes billing procedures for municipal sewage or storm water user fees assessed for real property that is occupied by someone other than the owner. Provides that a lien does not attach for user fees assessed against real property occupied by someone other than the owner under certain circumstances. Requires the assessing entity to release certain liens and delinquent user fees upon receipt of a verified demand in writing from the owner.

Effective: July 1, 2015.

Smith V, Burton

January 20, 2015, read first time and referred to Committee on Local Government.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1568

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-1.5-5-7, AS AMENDED BY P.L.114-2008,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 7. (a) The acquisition, construction, installation,
4 operation, and maintenance of facilities and land for storm water
5 systems may be financed through:
6 (1) proceeds of special taxing district bonds of the storm water
7 district;
8 (2) the assumption of liability incurred to construct the storm
9 water system being acquired;
10 (3) service rates;
11 (4) revenue bonds; or
12 (5) any other available funds.
13 (b) Except as provided in IC 36-9-23-37, the board, after holding a
14 public hearing with notice given under IC 5-3-1 and obtaining the
15 approval of the fiscal body of the unit served by the department, may



1 assess and collect user fees from all of the property of the storm water
 2 district for the operation and maintenance of the storm water system.
 3 The amount of the user fees must be the minimum amount necessary
 4 for the operation and maintenance of the storm water system. The
 5 assessment and collection of user fees under this subsection by the
 6 board of a county must also be approved by the county executive.

7 (c) **Subject to section 7.1 of this chapter**, the collection of the fees
 8 authorized by this section may be effectuated through a periodic billing
 9 system or through a charge appearing on the semiannual property tax
 10 statement of the affected property owner.

11 (d) The board shall use one (1) or more of the following factors to
 12 establish the fees authorized by this section:

- 13 (1) A flat charge for each lot, parcel of property, or building.
- 14 (2) The amount of impervious surface on the property.
- 15 (3) The number and size of storm water outlets on the property.
- 16 (4) The amount, strength, or character of storm water discharged.
- 17 (5) The existence of improvements on the property that address
 18 storm water quality and quantity issues.
- 19 (6) The degree to which storm water discharged from the property
 20 affects water quality in the storm water district.
- 21 (7) Any other factors the board considers necessary.

22 (e) The board may exercise reasonable discretion in adopting
 23 different schedules of fees or making classifications in schedules of
 24 fees based on:

- 25 (1) variations in the costs, including capital expenditures, of
 26 furnishing services to various classes of users or to various
 27 locations;
- 28 (2) variations in the number of users in various locations; and
- 29 (3) whether the property is used primarily for residential,
 30 commercial, or agricultural purposes.

31 SECTION 2. IC 8-1.5-5-7.1 IS ADDED TO THE INDIANA CODE
 32 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 33 1, 2015]: **Sec. 7.1. (a) This section applies to real property that is
 34 served by a district's storm water system and occupied by someone
 35 other than the owner.**

36 (b) **If:**

- 37 (1) **the collection of user fees under section 7 of this chapter is
 38 made through a periodic billing system, as authorized by
 39 section 7(c) of this chapter; and**
- 40 (2) **either the owner of real property to which this section
 41 applies or the person occupying the property submits to the
 42 department a document that:**



1 (A) is executed by the property owner and the person
2 occupying the property;

3 (B) identifies the person occupying the property by name;
4 and

5 (C) indicates that the person occupying the property is
6 responsible for paying the fees assessed by the board with
7 respect to the property;

8 the department shall establish or continue service to the property
9 in the name of the person occupying the property, as identified
10 under subdivision (2)(B), and shall ensure that the account or other
11 customer or billing records maintained by the department for the
12 property are in the name of the person occupying the property,
13 subject to any requirement for a deposit to ensure the payment of
14 user fees by the person occupying the property, or to any
15 requirement to ensure the creditworthiness of the person
16 occupying the property as the account holder or customer with
17 respect to the property, that the board may lawfully impose.

18 SECTION 3. IC 8-1.5-5-29, AS AMENDED BY P.L.196-2014,
19 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2015]: Sec. 29. (a) Subsections (c), (d), and ~~(e)~~ (f) do not
21 apply to a city that before January 1, 2005, adopted an ordinance
22 establishing procedures for the collection of unpaid user fees under this
23 chapter through the enforcement of a lien.

24 (b) **Except as provided in subsection (e)**, fees assessed against real
25 property under this chapter constitute a lien against the property
26 assessed. The lien is superior to all other liens except tax liens. Except
27 as provided in subsections (c), ~~and~~ (d), **and (e)**, the lien attaches when
28 notice of the lien is filed in the county recorder's office under section
29 30 of this chapter.

30 (c) A fee is not enforceable as a lien against a subsequent owner of
31 property unless the lien for the fee was recorded with the county
32 recorder before the conveyance to the subsequent owner. If property is
33 conveyed before a lien is filed, the department shall notify the person
34 who owned the property at the time the fee became payable. The notice
35 must inform the person that payment, including penalty fees for
36 delinquencies, is due not more than fifteen (15) days after the date of
37 the notice. If payment is not received within one hundred eighty (180)
38 days after the date of the notice, the amount due may be expensed as a
39 bad debt loss.

40 (d) **Except as provided in subsection (e)**, a lien attaches against
41 real property occupied by someone other than the owner only if the
42 department notifies the owner not later than twenty (20) days after the



time the user fees become sixty (60) days delinquent. A notice sent to the owner under this subsection must be sent by first class mail or by certified mail, return receipt requested (or an equivalent service permitted under IC 1-1-7-1) to:

- (1) the owner of record of real property with a single owner; or
- (2) at least one (1) of the owners of real property with multiple owners;

at the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice of the delinquency, or to another address specified by the owner, in a written notice to the department, at which the owner requests to receive a notice of delinquency under this subsection. The cost of sending notice under this subsection is an administrative cost that may be billed to the owner.

(e) A lien does not attach for user fees assessed against real property occupied by someone other than the owner if either of the following applies:

(1) The department:

- (A) has received a copy of a document described in section 7.1(b)(2) of this chapter with respect to the property; and**
- (B) maintains the account or other customer or billing records for the property in the name of the person occupying the property, as required by section 7.1 of this chapter.**

(2) The account or other customer or billing records maintained by the department for the property otherwise indicate that:

- (A) the property is occupied by someone other than the owner; and**
- (B) the person occupying the property is responsible for paying the user fees assessed by the board with respect to the property.**

(f) The department shall release:

- (1) liens filed with the county recorder after the recorded date of conveyance of the property; and
- (2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.

(g) Regardless of whether the department has notice under subsection (e)(1) or (e)(2) that real property is occupied by



1 someone other than the owner, the department shall release:

2 (1) any lien filed with the county recorder for user fees
3 assessed against real property occupied by someone other
4 than the owner; and

5 (2) delinquent user fees incurred by the person who occupies
6 the property and is responsible for paying the user fees
7 assessed by the board with respect to the property;

8 upon receipt of a verified demand in writing from the owner of the
9 property. The demand must state that the delinquent fees were not
10 incurred by the owner as a user of the storm water system and that
11 the owner has not been paid by the person occupying the property
12 for the delinquent user fees.

13 SECTION 4. IC 8-1.5-5-30, AS AMENDED BY P.L.196-2014,
14 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2015]: Sec. 30. (a) With respect to real property for which
16 the account or other customer or billing records maintained by the
17 department indicate under section 29(e)(1) or 29(e)(2) of this
18 chapter that:

19 (1) the property is occupied by someone other than the owner;
20 and

21 (2) the person occupying the property is responsible for
22 paying the user fees assessed by the board with respect to the
23 property;

24 subsections (c) through (e) and subsections (h) through (k) do not
25 apply to unpaid user fees and penalties assessed against the
26 property under this chapter.

27 ~~(a)~~ (b) The board may defer enforcing the collection of unpaid fees
28 and penalties assessed under this chapter until the unpaid fees and
29 penalties have been due and unpaid for at least ninety (90) days.
30 However, in the case of property that is occupied by someone other
31 than the owner, this subsection does not relieve the department of its
32 duty under section 29(d) of this chapter to notify the owner not later
33 than twenty (20) days after the time user fees become sixty (60) days
34 delinquent.

35 ~~(b)~~ (c) Except as provided in subsection ~~(k)~~; (n), the board shall
36 enforce payment of fees imposed under this chapter. As often as the
37 board determines necessary in a calendar year, the board shall prepare
38 either of the following:

39 (1) A list of the delinquent fees and penalties that are enforceable
40 under this section. The list must include the following:

41 (A) The name of the owner of each lot or parcel of real
42 property on which fees are delinquent.



(B) A description of the premises, as shown by the records of the county auditor.

(C) The amount of the delinquent fees, together with the penalty.

(2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

~~(c)~~ (d) An officer of the board shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall mail by certified mail, or by another delivery service providing proof of delivery, to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. A service charge of five dollars (\$5), which is in addition to the recording fee charged under this subsection and under subsection ~~(c)~~; (f), shall be added to each delinquent fee that is recorded.

~~(d)~~ (e) Using the lists and instruments prepared under subsection ~~(b)~~ (c) and recorded under subsection ~~(c)~~; (d), the board shall, not later than ten (10) days after the list or each individual instrument is recorded under subsection ~~(c)~~; (d), certify to the county auditor a list of the unpaid liens for collection with the next May installment of property taxes. The county and its officers and employees are not liable for any material error in the information on this list.

~~(c)~~ (f) The board shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

(g) The department shall release any recorded lien when a verified demand has been filed with the county auditor under section 29(f) or 29(g) of this chapter. The county recorder may not charge a fee for releasing a lien under this subsection.

~~(f)~~ (h) Upon receipt of the list under subsection ~~(c)~~; (e), the county auditor of each county shall add a fifteen dollar (\$15) certification fee for each lot or parcel of real property on which fees are delinquent. The fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the district the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due not later than the due date of the next May installment of property taxes. The county treasurer shall include any unpaid charges for the delinquent fee, penalty, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of



property, at the time the next cycle's property tax installment is billed.

~~(g)~~ **(i)** After certification of liens under subsection ~~(d)~~; **(e)**, the board may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor.

~~(h)~~ **(j)** If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

~~(i)~~ **(k)** At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the district. The county treasurer shall retain the service charges and certification fees that have been collected and shall deposit them in the county general fund.

~~(j)~~ **(l)** Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section ~~29(e)~~ **29(f)** of this chapter, files a verified demand with the county auditor.

(m) User fees, penalties, and service charges assessed against property occupied by someone other than the owner, regardless of whether the department has notice under section 29(e)(1) or 29(e)(2) of this chapter that the property is occupied by someone other than the owner, shall be removed from the tax roll for an owner who, in the manner prescribed by section 29(g) of this chapter, files a verified demand with the county auditor.

~~(k)~~ **(n)** A board may write off a fee or penalty under subsection ~~(a)~~ **(b)** that is:

(1) less than forty dollars (\$40); or

(2) removed from the tax roll under subsection (l) or (m).

SECTION 5. IC 8-1.5-5-31, AS ADDED BY P.L.131-2005, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 31. (a) A district may foreclose a lien, **other than a lien required to be released under section 30(f) or 30(g) of this chapter**, established by this chapter in order to collect fees and penalties. The district shall recover the amount of the fees and penalties, and a reasonable attorney's fee. The court shall order the sale to be made without relief from valuation or appraisement laws.

(b) Except as otherwise provided by this chapter, actions under this chapter are subject to the general statutes regarding municipal public improvement assessments.



SECTION 6. IC 36-9-23-25, AS AMENDED BY P.L.196-2014, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 25. (a) Subject to section 37 of this chapter, the municipal legislative body shall, by ordinance, establish just and equitable fees for the services rendered by the sewage works, and provide the dates on which the fees are due.

(b) Just and equitable fees are the fees required to maintain the sewage works in the sound physical and financial condition necessary to render adequate and efficient service. The fees must be sufficient to:

- (1) pay all expenses incidental to the operation of the works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals, and interest charges on bonds or other obligations;
- (2) provide the sinking fund required by section 21 of this chapter;
- (3) provide adequate money to be used as working capital; and
- (4) provide adequate money for improving and replacing the works.

Fees established after notice and hearing under this chapter are presumed to be just and equitable.

(c) Except as otherwise provided in a provision included in an ordinance under subsection (f), **and subject to section 25.1 of this chapter**, the fees are payable by the owner of each lot, parcel of real property, or building that:

- (1) is connected with the sewage works by or through any part of the municipal sewer system; or
- (2) uses or is served by the works.

Unless the municipal legislative body finds otherwise, the works are considered to benefit every lot, parcel of real property, or building connected or to be connected with the municipal sewer system as a result of construction work under the contract, and the fees shall be billed and collected accordingly.

(d) The municipal legislative body may use one (1) or more of the following factors to establish the fees:

- (1) A flat charge for each sewer connection.
- (2) The amount of water used on the property.
- (3) The number and size of water outlets on the property.
- (4) The amount, strength, or character of sewage discharged into the sewers.
- (5) The size of sewer connections.
- (6) Whether the property has been or will be required to pay separately for any part of the sewage works.



(7) Whether the property, although vacant or unimproved, is benefited by a local or lateral sewer because of the availability of that sewer. However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of the owner's property, that a fee or assessment for sewer availability may be charged, and the fee may reflect only the capital cost of the sewer and not the cost of operation and maintenance of the sewage works.

(8) The cost of collecting, treating, and disposing of garbage in a sanitary manner, including equipment and wages.

(9) The amount of money sufficient to compensate the municipality for the property taxes that would be paid on the sewage works if the sewage works were privately owned.

(10) Any other factors the legislative body considers necessary.

Fees collected under subdivision (8) may be spent for that purpose only after compliance with all provisions of the ordinance authorizing the issuance of the revenue bonds for the sewage works. The board may transfer fees collected in lieu of taxes under subdivision (9) to the general fund of the municipality.

(e) The municipal legislative body may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on variations in:

- (1) the costs, including capital expenditures, of furnishing services to various classes of users or to various locations; or
- (2) the number of users in various locations.

(f) Notwithstanding IC 14-33-5-21, this subsection does not apply to a conservancy district established under IC 14-33 for the collection, treatment, and disposal of sewage and other liquid wastes. In an ordinance adopted under this section, the municipal legislative body may include one (1) or more of the following provisions with respect to property occupied by someone other than the owner of the property:

(1) **Subject to section 25.1 of this chapter**, that fees for the services rendered by the sewage works to the property are payable by the person occupying the property. At the option of the municipal legislative body, the ordinance may include any:

- (A) requirement for a deposit to ensure payment of the fees by the person occupying the property; or
- (B) other requirement to ensure the creditworthiness of the person occupying the property as the account holder or customer with respect to the property;

that the municipal legislative body may lawfully impose.

(2) **Subject to section 25.1 of this chapter**, that the fees for the



1 services rendered by the sewage works to the property are payable
 2 by the person occupying the property if one (1) of the following
 3 conditions is satisfied:

4 (A) Either the property owner or the person occupying the
 5 property gives to the general office of the utility written notice
 6 that indicates that the person occupying the property is
 7 responsible for paying the fees with respect to the property and
 8 requests that the account or other customer or billing records
 9 maintained for the property be in the name of the person
 10 occupying the property. At the option of the municipal
 11 legislative body, the ordinance may provide that a document
 12 that:

13 (i) is executed by the property owner and the person
 14 occupying the property;

15 (ii) identifies the person occupying the property by name;
 16 and

17 (iii) indicates that the person occupying the property is
 18 responsible for paying the fees assessed by the utility with
 19 respect to the property;

20 serves as written notice for purposes of this clause.

21 (B) The account or other customer or billing records
 22 maintained by the utility for the property otherwise indicate
 23 that:

24 (i) the property is occupied by someone other than the
 25 owner; and

26 (ii) the person occupying the property is responsible for
 27 paying the fees.

28 (C) The property owner or the person occupying the property
 29 satisfies any other requirements or conditions that the
 30 municipal legislative body includes in the ordinance.

31 (3) **Subject to section 32.1 of this chapter**, that fees assessed
 32 against the property for the services rendered by the sewage
 33 works to the property do not constitute a lien against the property,
 34 notwithstanding section 32 of this chapter, and subject to any
 35 requirements or conditions set forth in the ordinance.

36 This subsection may not be construed to prohibit a municipal
 37 legislative body from including in an ordinance adopted under this
 38 section any other provision that the municipal legislative body
 39 considers appropriate.

40 SECTION 7. IC 36-9-23-25.1 IS ADDED TO THE INDIANA
 41 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2015]: **Sec. 25.1. (a) This section applies to**



1 real property that is served by a municipality's sewage works and
 2 occupied by someone other than the owner, regardless of whether
 3 the municipality's legislative body has adopted an ordinance
 4 provision described in section 25(f)(1) or 25(f)(2) of this chapter.

5 (b) If either the owner of real property to which this section
 6 applies or the person occupying the property submits to the
 7 general office of the utility written notice that:

8 (1) requests that the account or other customer or billing
 9 records maintained for the property be in the name of the
 10 person occupying the property; and

11 (2) includes a document that:

12 (A) is executed by the property owner and the person
 13 occupying the property;

14 (B) identifies the person occupying the property by name;
 15 and

16 (C) indicates that the person occupying the property is
 17 responsible for paying the fees assessed by the utility with
 18 respect to the property;

19 the utility shall establish or continue service to the property in the
 20 name of the person occupying the property, as identified under
 21 subdivision (2)(B), and shall ensure that the account or other
 22 customer or billing records maintained by the utility for the
 23 property are in the name of the person occupying the property,
 24 subject to any requirement for a deposit to ensure payment of fees
 25 by the person occupying the property, or to any other requirement
 26 to ensure the creditworthiness of the person occupying the
 27 property as the account holder or customer with respect to the
 28 property, that the municipal legislative body may lawfully impose.

29 SECTION 8. IC 36-9-23-32, AS AMENDED BY P.L.196-2014,
 30 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2015]: Sec. 32. (a) Except as otherwise provided in **section**
 32 **32.1 of this chapter or** in a provision included in an ordinance under
 33 section 25(f)(3) of this chapter, fees assessed against real property
 34 under this chapter or under any statute repealed by IC 19-2-5-30
 35 (repealed September 1, 1981) constitute a lien against the property
 36 assessed. The lien is superior to all other liens except tax liens. Except
 37 as provided in subsections (b) and (c), the lien attaches when notice of
 38 the lien is filed in the county recorder's office under section 33 of this
 39 chapter.

40 (b) A fee is not enforceable as a lien against a subsequent owner of
 41 property unless the lien for the fee was recorded with the county
 42 recorder before the conveyance to the subsequent owner. If the property



1 is conveyed before the lien can be filed, the municipality shall notify
 2 the person who owned the property at the time the fee became payable.
 3 The notice must inform the person that payment, including penalty fees
 4 for delinquencies, is due not more than fifteen (15) days after the date
 5 of the notice. If payment is not received within one hundred eighty
 6 (180) days after the date of the notice, the amount due may be
 7 expensed as a bad debt loss.

8 (c) Except as otherwise provided **in section 32.1 of this chapter or**
 9 **in a provision included in an ordinance under section 25(f)(3) of this**
 10 **chapter, a lien attaches against real property occupied by someone**
 11 **other than the owner only if the utility notifies the owner not later than**
 12 **twenty (20) days after the time the utility fees become sixty (60) days**
 13 **delinquent. A notice sent to the owner under this subsection must be**
 14 **sent by first class mail or by certified mail, return receipt requested (or**
 15 **an equivalent service permitted under IC 1-1-7-1) to:**

- 16 (1) the owner of record of real property with a single owner; or
- 17 (2) at least one (1) of the owners of real property with multiple
- 18 owners;

19 at the last address of the owner for the property as indicated in the
 20 records of the county auditor on the date of the notice of the
 21 delinquency, or to another address specified by the owner, in a written
 22 notice to the utility, at which the owner requests to receive a notice of
 23 delinquency under this subsection. The cost of sending notice under
 24 this subsection is an administrative cost that may be billed to the
 25 owner.

26 (d) The municipality shall release:

- 27 (1) liens filed with the county recorder after the recorded date of
- 28 conveyance of the property; and
- 29 (2) delinquent fees incurred by the seller;

30 upon receipt of a verified demand in writing from the purchaser. The
 31 demand must state that the delinquent fees were not incurred by the
 32 purchaser as a user, lessee, or previous owner, and that the purchaser
 33 has not been paid by the seller for the delinquent fees.

34 (e) **This subsection applies to real property that is served by a**
 35 **municipality's sewage works and occupied by someone other than**
 36 **the owner. Regardless of whether:**

- 37 (1) the utility has notice under section 25.1 of this chapter, or
- 38 through an ordinance provision described in section 25(f)(2)
- 39 of this chapter, that the property is occupied by someone
- 40 other than the owner; or
- 41 (2) the municipality has adopted an ordinance provision
- 42 described in section 25(f)(3) of this chapter;



1 the municipality shall release any lien filed with the county
 2 recorder for user fees assessed against the property and shall
 3 release any delinquent user fees incurred by the person who
 4 occupies the property and is responsible for paying the user fees
 5 with respect to the property, upon receipt of a verified demand in
 6 writing from the owner of the property. The demand must state
 7 that the delinquent fees were not incurred by the owner as a user
 8 of the sewage works and that the owner has not been paid by the
 9 person occupying the property for the delinquent user fees.

10 SECTION 9. IC 36-9-23-32.1 IS ADDED TO THE INDIANA
 11 CODE AS A NEW SECTION TO READ AS FOLLOWS
 12 [EFFECTIVE JULY 1, 2015]: **Sec. 32.1. A lien does not attach for**
 13 **user fees assessed against property occupied by someone other**
 14 **than the owner if either of the following applies:**

15 (1) The utility has notice under section 25.1 of this chapter, or
 16 through an ordinance provision described in section 25(f)(2)
 17 of this chapter, that the property is occupied by someone
 18 other than the owner.

19 (2) The municipality has adopted an ordinance provision
 20 described in section 25(f)(3) of this chapter and any
 21 requirements or conditions:

22 (A) described in section 25(f)(1) or 25(f)(2) of this chapter;

23 and

24 (B) included in the ordinance;

25 have been satisfied.

26 SECTION 10. IC 36-9-23-33, AS AMENDED BY P.L.196-2014,
 27 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2015]: Sec. 33. (a) Subsections (c) through ~~(f)~~ **(f) and (i)**
 29 **through (l)** do not apply to unpaid fees and penalties assessed against
 30 property occupied by someone other than the property owner if **either**
 31 **of the following applies:**

32 (1) The municipal legislative body has adopted an ordinance
 33 provision described in section 25(f) of this chapter concerning
 34 property occupied by someone other than the property owner **and:**

35 ~~(2)~~ (A) the ordinance provision described in section 25(f) of
 36 this chapter provides that fees assessed against the property for
 37 services rendered by the sewage works to the property do not
 38 constitute a lien against the property, as described in section
 39 25(f)(3) of this chapter; and

40 ~~(3)~~ (B) any requirements or conditions:

41 ~~(A)~~ (i) described in section 25(f)(1) or 25(f)(2) of this
 42 chapter; and



1 ~~(B)~~ (ii) included in the ordinance;
 2 have been satisfied.

3 **(2) The utility has notice under section 25.1 of this chapter, or**
 4 **through an ordinance provision described in section 25(f)(2)**
 5 **of this chapter, that real property is occupied by someone**
 6 **other than the owner.**

7 (b) An officer described in subsection (c) may defer enforcing the
 8 collection of unpaid fees and penalties assessed under this chapter until
 9 the unpaid fees and penalties have been due and unpaid for at least
 10 ninety (90) days. However, in the case of property that is occupied by
 11 someone other than the owner, this subsection does not relieve the
 12 utility of its duty under section 32(c) of this chapter to notify the owner
 13 not later than twenty (20) days after the time user fees become sixty
 14 (60) days delinquent.

15 (c) Except as provided in subsection ~~(m)~~; (o), the officer charged
 16 with the collection of fees and penalties assessed under this chapter
 17 shall enforce their payment. As often as the officer determines is
 18 necessary in a calendar year, the officer shall prepare either of the
 19 following:

20 (1) A list of the delinquent fees and penalties that are enforceable
 21 under this section, which must include the following:

22 (A) The name or names of the owner or owners of each lot or
 23 parcel of real property on which fees are delinquent.

24 (B) A description of the premises, as shown by the records of
 25 the county auditor.

26 (C) The amount of the delinquent fees, together with the
 27 penalty.

28 (2) An individual instrument for each lot or parcel of real property
 29 on which the fees are delinquent.

30 (d) The officer shall record a copy of each list or each individual
 31 instrument with the county recorder who shall charge a fee for
 32 recording the list or each individual instrument in accordance with the
 33 fee schedule established in IC 36-2-7-10. The officer shall then mail to
 34 each property owner on the list or on an individual instrument a notice
 35 stating that a lien against the owner's property has been recorded.
 36 Except for a county having a consolidated city, a service charge of five
 37 dollars (\$5), which is in addition to the recording fee charged under
 38 this subsection and under subsection (g), shall be added to each
 39 delinquent fee that is recorded.

40 (e) This subsection applies only to a county containing a
 41 consolidated city. Using the lists and instruments prepared under
 42 subsection (c) and recorded under subsection (d), the officer shall



1 certify to the county auditor, according to a schedule agreed upon by
 2 the county treasurer and the officer, a list of the unpaid liens for
 3 collection with the next cycle's property tax installment. The county
 4 and its officers and employees are not liable for any material error in
 5 the information on the list.

6 (f) This subsection applies to a county not described in subsection
 7 (e). Using the lists and instruments prepared under subsection (c) and
 8 recorded under subsection (d), the officer shall, not later than ten (10)
 9 days after the list or each individual instrument is recorded under
 10 subsection (d), certify to the county auditor a list of the unpaid liens for
 11 collection with the next May installment of property taxes. The county
 12 and its officers and employees are not liable for any material error in
 13 the information on this list.

14 (g) The officer shall release any recorded lien when the delinquent
 15 fees, penalties, service charges **(if applicable)**, and recording fees have
 16 been fully paid. The county recorder shall charge a fee for releasing the
 17 lien in accordance with IC 36-2-7-10.

18 **(h) The municipality shall release any recorded lien when a**
 19 **verified demand has been filed with the county auditor under**
 20 **section 32(d) or 32(e) of this chapter. The county recorder may not**
 21 **charge a fee for releasing a lien under this subsection.**

22 ~~(h)~~ (i) On receipt of the list under subsection (e) or (f), the county
 23 auditor of each county shall add a fifteen dollar (\$15) certification fee
 24 for each lot or parcel of real property on which fees are delinquent,
 25 which fee is in addition to all other fees and charges. The county
 26 auditor shall immediately enter on the tax duplicate for the
 27 municipality the delinquent fees, penalties, service charges **(if**
 28 **applicable)**, recording fees, and certification fees, which are due not
 29 later than the due date of the next cycle's installment of property taxes.
 30 The county treasurer shall then include any unpaid charges for the
 31 delinquent fee, penalty, service charge **(if applicable)**, recording fee,
 32 and certification fee to the owner or owners of each lot or parcel of
 33 property, at the time the next cycle's property tax installment is billed.

34 ~~(i)~~ (j) After certification of liens under subsection (f), the officer
 35 may not collect or accept delinquent fees, penalties, service charges,
 36 recording fees, or certification fees from property owners whose
 37 property has been certified to the county auditor. This subsection does
 38 not apply to a county containing a consolidated city.

39 ~~(j)~~ (k) If a delinquent fee, penalty, service charge **(if applicable)**,
 40 recording fee, and certification fee are not paid, they shall be collected
 41 by the county treasurer in the same way that delinquent property taxes
 42 are collected.



1 ~~(k)~~ (l) At the time of each semiannual tax settlement, the county
 2 treasurer shall certify to the county auditor all fees, charges, and
 3 penalties that have been collected. The county auditor shall deduct the
 4 service charges **(if applicable)** and certification fees collected by the
 5 county treasurer and pay over to the officer the remaining fees and
 6 penalties due the municipality. The county treasurer shall retain the
 7 service charges **(if applicable)** and certification fees that have been
 8 collected, and shall deposit them in the county general fund.

9 ~~(j)~~ (m) Fees, penalties, and service charges **(if applicable)** that were
 10 not recorded before a recorded conveyance shall be removed from the
 11 tax roll for a purchaser who, in the manner prescribed by section 32(d)
 12 of this chapter, files a verified demand with the county auditor.

13 (n) **User fees, penalties, and service charges (if applicable)**
 14 **assessed against property occupied by someone other than the**
 15 **owner, regardless of whether:**

16 (1) **the utility has notice under section 25.1 of this chapter, or**
 17 **through an ordinance provision described in section 25(f)(2)**
 18 **of this chapter, that the property is occupied by someone**
 19 **other than the owner; or**

20 (2) **the municipality has adopted an ordinance provision**
 21 **described in section 25(f)(3) of this chapter;**

22 **shall be removed from the tax roll for an owner who, in the manner**
 23 **prescribed by section 32(e) of this chapter, files a verified demand**
 24 **with the county auditor.**

25 ~~(m)~~ (o) A board may write off a fee or penalty under subsection (b)
 26 that is:

27 (1) **for less than forty dollars (\$40); or**

28 (2) **removed from the tax roll under subsection (m) or (n).**

29 SECTION 11. IC 36-9-23-34 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 34. (a) A municipality
 31 or board may foreclose a lien, **other than a lien required to be**
 32 **released under section 33(g) or 33(h) of this chapter**, established by
 33 this chapter in order to collect fees and penalties. The municipality or
 34 board shall recover the amount of the fees and penalties, and a
 35 reasonable attorney's fee. The court shall order the sale to be made
 36 without relief from valuation or appraisal laws.

37 (b) Except as otherwise provided by this chapter, actions under this
 38 chapter are subject to the general statutes regarding municipal public
 39 improvement assessments.

40 SECTION 12. IC 36-9-25-11, AS AMENDED BY P.L.196-2014,
 41 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2015]: Sec. 11. (a) In connection with its duties, the board



1 may fix fees for the treatment and disposal of sewage and other waste
 2 discharged into the sewerage system, collect the fees, and establish and
 3 enforce rules governing the furnishing of and payment for sewage
 4 treatment and disposal service. The fees must be just and equitable and
 5 shall be paid by any user of the sewage works and, except as otherwise
 6 provided in an ordinance provision described in subsection (l), the
 7 owner of every lot, parcel of real property, or building that is connected
 8 with and uses the sewage works of the district by or through any part
 9 of the sewerage system. This section applies to owners of property that
 10 is partially or wholly exempt from taxation, as well as owners of
 11 property subject to full taxation.

12 (b) The board may change fees from time to time. The fees, together
 13 with the taxes levied under this chapter, must at all times be sufficient
 14 to produce revenues sufficient to pay operation, maintenance, and
 15 administrative expenses, to pay the principal and interest on bonds as
 16 they become due and payable, and to provide money for the revolving
 17 fund authorized by this chapter.

18 (c) Fees may not be established until a public hearing has been held
 19 at which all the users of the sewage works and owners of property
 20 served or to be served by the works, including interested parties, have
 21 had an opportunity to be heard concerning the proposed fees. After
 22 introduction of the resolution fixing fees, and before they are finally
 23 adopted, notice of the hearing setting forth the proposed schedule of
 24 fees shall be given by publication in accordance with IC 5-3-1. After
 25 the hearing the resolution establishing fees, either as originally
 26 introduced or as amended, shall be passed and put into effect.
 27 However, fees related to property that is subject to full taxation do not
 28 take effect until they have been approved by ordinance of the municipal
 29 legislative body or, in the case of a district described in section 3(b)(2)
 30 of this chapter, under section 11.3 of this chapter.

31 (d) A copy of the schedule of the fees shall be kept on file in the
 32 office of the board and must be open to inspection by all interested
 33 parties. The fees established for any class of users or property served
 34 shall be extended to cover any additional premises thereafter served
 35 that fall within the same class, without the necessity of hearing or
 36 notice.

37 (e) A change of fees may be made in the same manner as fees were
 38 originally established. However, if a change is made substantially pro
 39 rata for all classes of service, hearing or notice is not required, but
 40 approval of the change by ordinance of the municipal legislative body
 41 is required, and, in the case of a district described in section 3(b)(2) of
 42 this chapter, approval under section 11.3 of this chapter is required.



(f) If a fee established is not paid within thirty (30) days after it is due, the board may recover, in a civil action in the name of the municipality, the amount, together with a penalty of ten percent (10%) and a reasonable attorney's fee from:

- (1) the delinquent user; or
- (2) the owner of the property;

subject to any ordinance described in subsection (l).

(g) Except as otherwise provided in subsection (h) **or (m)**, or in an ordinance provision described in subsection (l), fees assessed against real property under this section also constitute a lien against the property assessed. The lien attaches at the time of the filing of the notice of lien in the county recorder's office. The lien is superior to all other liens except tax liens, and shall be enforced and foreclosed in the same manner as is provided for liens under IC 36-9-23-33 and IC 36-9-23-34.

(h) A fee assessed against real property under this section constitutes a lien against the property assessed only when the fee is delinquent for no more than three (3) years from the day after the fee is due.

(i) In addition to the:

- (1) penalties under subsections (f) and (g); or
- (2) alternative penalty available under section 11.5 of this chapter;

a delinquent user may not discharge water into the public sewers and may have the property disconnected from the public sewers.

(j) The authority to establish a user fee under this section includes fees to recover the cost of construction of sewage works from industrial users as defined and required under federal statute or rule. Any industrial users' cost recovery fees may become a lien upon the real property and shall be collected in the manner provided by law. In addition, the imposition of the fees, the use of the amounts collected, and the criteria for the fees must be consistent with the regulations of the federal Environmental Protection Agency.

(k) The authority to establish a user fee under this section includes fees to recover the costs associated with providing financial assistance under section 42 of this chapter. A fee that is:

- (1) established under this subsection or any other law; and
- (2) used to provide financial assistance under section 42 of this chapter;

is considered just and equitable if the project for which the financial assistance is provided otherwise complies with the requirements of this chapter.



(l) For purposes of this subsection, "municipal legislative body" refers to the legislative body of each municipality in the district, in the case of a district described in section 3(b)(2) of this chapter. This subsection does not apply to a conservancy district established under IC 14-33 for the collection, treatment, and disposal of sewage and other liquid wastes. In an ordinance adopted under this chapter, the municipal legislative body may include one (1) or more of the following provisions with respect to property occupied by someone other than the owner of the property:

(1) That fees for the services rendered by the sewerage system to the property are payable by the person occupying the property. At the option of the municipal legislative body, the ordinance may include any:

(A) requirement for a deposit to ensure payment of the fees by the person occupying the property; or

(B) other requirement to ensure the creditworthiness of the person occupying the property as the account holder or customer with respect to the property;

that the municipal legislative body may lawfully impose.

(2) That the fees for the services rendered by the sewerage system to the property are payable by the person occupying the property if one (1) of the following conditions is satisfied:

(A) Either the property owner or the person occupying the property gives to the board written notice that indicates that the person occupying the property is responsible for paying the fees with respect to the property and requests that the account or other customer or billing records maintained for the property be in the name of the person occupying the property. At the option of the municipal legislative body, the ordinance may provide that a document that:

(i) is executed by the property owner and the person occupying the property;

(ii) identifies the person occupying the property by name; and

(iii) indicates that the person occupying the property is responsible for paying the fees assessed by the board with respect to the property;

serves as written notice for purposes of this clause.

(B) The account or other customer or billing records maintained by the board for the property otherwise indicate that:

(i) the property is occupied by someone other than the



owner; and

(ii) the person occupying the property is responsible for paying the fees.

(C) The property owner or the person occupying the property satisfies any other requirements or conditions that the municipal legislative body includes in the ordinance.

(3) That fees assessed against the property for the services rendered by the sewerage system to the property do not constitute a lien against the property, notwithstanding subsection (g), and subject to any requirements or conditions set forth in the ordinance.

This subsection may not be construed to prohibit a municipal legislative body from including in an ordinance adopted under this chapter any other provision that the municipal legislative body considers appropriate.

(m) A lien attaches for user fees assessed against property occupied by someone other than the owner only if the board provides the notice required under section 11.2 of this chapter to the owner at the latest address of the owner as shown on the property tax records of the county in which the property is located. However, a lien does not attach for user fees assessed against property occupied by someone other than the owner if either of the following applies:

(1) The board has notice under section 11.4 of this chapter, or through an ordinance provision described in subsection (l)(2), that the property is occupied by someone other than the owner.

(2) The municipal legislative body has adopted an ordinance provision described in subsection (l)(3) and any requirements or conditions:

(A) described in subsection (l)(1) or (l)(2); and

(B) included in the ordinance;

have been satisfied.

(n) Regardless of whether the board has notice under section 11.4 of this chapter, or through an ordinance provision described in subsection (l)(2), that property is occupied by someone other than the owner, the board shall release:

(1) any lien filed with the county recorder for user fees assessed against property occupied by someone other than the owner; and

(2) delinquent user fees incurred by the person who occupies the property and is responsible for paying the user fees



1 assessed by the board with respect to the property;
 2 upon receipt of a verified demand in writing from the owner of the
 3 property. The demand must state that the delinquent fees were not
 4 incurred by the owner as a user of the sewage works and that the
 5 owner has not been paid by the person occupying the property for
 6 the delinquent user fees.

7 SECTION 13. IC 36-9-25-11.4 IS ADDED TO THE INDIANA
 8 CODE AS A NEW SECTION TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 2015]: **Sec. 11.4. (a)** For purposes of this
 10 section, "municipal legislative body" refers to the legislative body
 11 of each municipality in the district, in the case of a district
 12 described in section 3(b)(2) of this chapter.

13 **(b)** This section applies to real property that is served by a
 14 district's sewage works and occupied by someone other than the
 15 owner, regardless of whether the municipal legislative body has
 16 adopted an ordinance provision described in section 11(l)(1) or
 17 11(l)(2) of this chapter.

18 **(c)** If either the owner of real property to which this section
 19 applies or the person occupying the property submits to the board
 20 written notice that:

21 (1) requests that the account or other customer or billing
 22 records maintained for the property be in the name of the
 23 person occupying the property; and

24 (2) includes a document that:

25 (A) is executed by the property owner and the person
 26 occupying the property;

27 (B) identifies the person occupying the property by name;
 28 and

29 (C) indicates that the person occupying the property is
 30 responsible for paying the fees assessed by the board with
 31 respect to the property;

32 the board shall establish or continue service to the property in the
 33 name of the person occupying the property, as identified under
 34 subdivision (2)(B), and shall ensure that the account or other
 35 customer or billing records maintained by the board for the
 36 property are in the name of the person occupying the property,
 37 subject to any requirement for a deposit to ensure payment of fees
 38 by the person occupying the property, or to any other requirement
 39 to ensure the creditworthiness of the person occupying the
 40 property as the account holder or customer with respect to the
 41 property, that the board or the municipal legislative body may
 42 lawfully impose.

